

No. 24-320

IN THE

Supreme Court of the United States

SIMON A. SOTO,

Petitioner,

v.

UNITED STATES,

Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit**

PETITIONER'S REPLY BRIEF

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INTRODUCTION

This case presents a narrow and discrete question of statutory interpretation, the answer to which will determine whether thousands of retired veterans injured in combat may receive the full measure of compensation that Congress awarded them. There is no doubt that petitioner Simon Soto and the class he represents served this country with honor and sustained traumatic injuries as a result. There is no doubt that Congress directed that Mr. Soto and his fellow combat-wounded veterans be granted Combat-Related Special Compensation (“CRSC”). And there is no doubt that Congress, in drafting the CRSC statute, explicitly provided that the Secretary of each branch of the U.S. armed forces “shall pay” CRSC to “each eligible combat-related disabled uniformed services retiree” in an amount and via procedures prescribed in that statute. 10 U.S.C. § 1413a.

The sole question that remains—the question that has divided the only lower court with jurisdiction to resolve this issue—is whether the CRSC statute constitutes “another law” that sets forth a procedure for calculating the amounts owed to wounded veterans entitled to CSRC, or whether the general procedural provisions in the Barring Act, enacted some 70 years before the CRSC statute, apply instead.

The CRSC statute directly answers the question. It states that each Secretary “shall pay” CRSC to eligible veterans in an “amount ... determined under subsection (b)” of the statute; it defines who is eligible for CRSC; it requires the Secretary of Defense to “prescribe procedures and criteria under

which a disabled uniformed services retiree may apply” for CRSC; and it states where funds for benefits are to be drawn from. 10 U.S.C. § 1043a(a)-(e), (h). Nothing more is needed to settle wounded veterans’ claims for CRSC—which, as this Court has explained, means only to make an “administrative determination of the amount due.” *Ill. Sur. Co. v. United States*, 240 U.S. 214, 219 (1916). Because Congress enacted a self-contained process for determining the amount of CRSC due to wounded veterans, it displaced the general settlement procedures set out in the Barring Act.

In the decision below, the Federal Circuit formulated a test, without regard to precedent of this and other courts, that for a statute to have settlement authority it must (1) use “specific language” that will “typically” involve the term “settle” or (2) specifically set out a period of recovery. Pet. App. 18a (Reyna, J., dissenting). The government provides no basis for defending the Federal Circuit’s test and fails to explain why courts should look for the inclusion of the word “settle,” rather than applying the test enunciated in *Illinois Surety* and looking as to whether the statute can settle a claim by administratively determining the amount due. Without certiorari, the erroneous ruling will deny deserving veterans of the full extent of the benefits to which they are entitled.

The government does not and cannot dispute that this case is an ideal vehicle to resolve the question presented and is ripe for the Court’s review. This Court’s input will aid deserving veterans in understanding what benefits they are entitled to due to their sacrifice.

The Court should grant the Petition.

I. THIS COURT’S REVIEW IS NECESSARY TO ENSURE THAT RETIRED SERVICE MEMBERS WOUNDED IN COMBAT RECEIVE FULL COMPENSATION.

The panel’s decision below is—unless this Court grants review—the final word on how combat veterans’ claims for CRSC will be settled. The Federal Circuit has denied *en banc* rehearing, and—because that court alone decides claims for veterans’ benefits—no further percolation is possible. Thus, the government’s observation that the decision below does not conflict with “another court of appeals,” Opp. 8, is beside the point: no other court of appeals *can* weigh in on this issue. This Court’s review is necessary if CRSC beneficiaries are to have full compensation provided by § 1013a.

Contrary to the government’s assertions, the CRSC statute has its own settlement power and does not fall under the purview of the Barring Act. The Barring Act “does not apply to limit the available compensation if ‘another provision of law’ addresses how ‘claims of or against the United States Government shall be settled.’” Pet. App. 12a; see also 31 U.S.C. § 3702(a)(4). The CRSC statute squarely fits as “another provision of law” that contains mechanisms to settle claims.

A. The Text of Section 1413a Establishes Authority in the Secretaries of the Military Branches to Settle Claims for CRSC.

The government alleges § 1413a does not contain any language that “create[s] an administrative process to settle claims for unpaid amounts, or any provision that otherwise conflicts with the Barring Act’s conferral of settlement authority or its six-

year statute of limitations.” Opp. 9. That is incorrect.

First, the CRSC statute establishes an administrative process to determine both who is eligible and what amounts are due to each eligible retired service member—and further provides that those amounts “shall” be paid accordingly. In particular, the statute defines eligibility for CRSC benefits (10 U.S.C. § 1413a(c), (e)), directs the Secretary of Defense to create procedures and criteria to consider an applicant’s eligibility (§ 1413a(d)), contains formulas for calculating the award (§ 1413a(b)), directs that the Secretary concerned “shall pay” the CRSC award (§ 1413a(a)), and identifies the source of payments (§ 1413a(h)). The statute goes far beyond simply establishing a veteran’s substantive right to CRSC and authorizing payment (Opp. 10), as it explicitly details how to determine a veteran’s entitlements and gives the Secretary the authority to pay amounts owed.

B. The CRSC Statute is Unlike Other Forms of Military Compensation.

CRSC is a landmark legislation that is unlike other forms of military compensation. The legislative history and intent surrounding CRSC demonstrate that the legislature intended it to have a broader scope than other forms of military compensation.¹ CRSC provides benefits to thousands of veterans who have combat-related injuries without requiring offset of VA compensation. The statute is

¹ In its amicus brief, National Law School Veterans Clinic Consortium emphasizes that the CRSC’s historical context demonstrates that Congress intended to set CRSC apart from other forms of military compensation and provide veterans with additional benefits separate from retirement pay. Amicus Brief at 7.

also distinct from other forms of military compensation in that it (1) does not fall into the list of claims in the Barring Act, and (2) includes details regarding how to settle claims with a level of specificity that is not found in other statutes pertaining to military compensation.

1. CRSC benefits are not included within the Barring Act.

The government argues that CRSC is indistinguishable from other military compensation programs, where “the Secretary’s authority to make a final administrative determination about the government’s total liability ... arises out of the Barring Act.” Opp. 10. This is incorrect. First, the Secretary ignores that the Barring Act applies to “claims involving uniformed service members’ pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits.” 31 U.S.C. § 3702(a)(1)(A). These are the forms of military compensation addressed in the statutes the government lists in its Opposition: pay (37 U.S.C. § 204 (basic pay) and 37 U.S.C. §§ 302–308 (types of special pay); retired pay (10 U.S.C. §§ 1401, 12731, and 12739); and survivor benefits (10 U.S.C. §§ 1448, 1451). CRSC on the other hand, does not fall into any of the Barring Act’s categories, 31 U.S.C. § 3702(a). The benefits that § 1413a provides veterans are not pay, allowances, travel, transportation, payments for unused accrued leave, survivor benefits, or retired pay. See Pet. App. 44a. Indeed, the CRSC statute makes this explicit: “Payments under this section are not retired pay.” 10 U.S.C. § 1413a(g). Because the government’s argument focuses on forms of military compensation expressly addressed in the Barring Act—which CRSC is not—its argument fails.

2. Unlike § 1413a, other military compensation statutes do not contain settlement mechanisms within their text.

Moreover, the other military compensation statutes the government points to lack the specificity contained in § 1413a to settle a claim and administratively determine the amount due. For example, the government points to 10 U.S.C. §§ 1401, 12731, and 12739 as provisions that “specify who is eligible for compensation and in what amount,” but where claims are nonetheless settled under the Barring Act. Opp. 10–11. But these statutes are materially distinguishable from the CRSC statute. Section 1401(a) details only the computation of a veteran’s retired pay. Section 12731 simply states that “a person is entitled” to the benefits outlined in statute. Sections (b) and (d) of § 12731 detail that either the Secretary of the military department or the Secretary of Homeland Security should receive an entitled person’s application for benefits and should provide notice to applicants as necessary.

Unlike the CRSC statute, these provisions do not provide that the “Secretary concerned *shall pay*” the amounts owed under the terms of the statute. 10 U.S.C. § 1413a(a) (emphasis added). Compare § 12731(f)(3) (“The Secretary concerned shall periodically notify”) with § 1413a(a) (“The Secretary concerned shall pay”). Section 12737 provides how to calculate benefits and who the statute applies to but nevertheless, that statute does not explain that the Secretary concerned “shall pay” those benefits. 10 U.S.C. §§ 1448, 1451 and 37 U.S.C. § 204 contains similar deficiencies. Congress set Section 1413a apart in its level of specificity surrounding its settlement mechanisms,

distinguishing the CRSC statute from other military compensation provisions.

II. THE CONCERNS RAISED IN THE GOVERNMENT'S OPPOSITION ARE OVERBLOWN.

A. The Barring Act Would Not be Null if this Court Upholds CRSC's Settlement Authority.

Section 3702(a)(1)(A) would not be rendered null based on Petitioner's interpretation of Section 1413a. Opp. 10–11. The government attempts to state that the Barring Act governs settlement of *every* form of military claim and benefits, but as previously stated, that is contrary to the text of the statute. *Supra* I.B.2. Yet the Barring Act plainly does apply to “claims involving uniformed service members’ pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits.” Pet. App. 35a. See also 31 U.S.C. § 3702(a). The Barring Act explicitly covers numerous monetary entitlements so long as they lack the type of settlement mechanisms contained in the CRSC statute. The very statutes the government cites, such as 10 U.S.C. §§ 1401, 1448, and 37 U.S.C. § 204, are examples of statutes that lack settlement mechanisms *and* fall into the categories of claims explicitly covered by the Barring Act. Opp. 10. There is no risk of nullity.

B. Petitioner's Interpretation of § 1413a Will Not Be Unduly Burdensome.

The government creates false alarm by asserting a determination that Section 1413a includes its own settlement mechanism will cause disabled uniform retirees to wait “indefinitely” before alerting the Department of the benefits they are owed. Opp. 11–12. Veterans have every motivation to apply for

CRSC because they can receive payment only as a result of an application. Under § 1413a, there is no interest added to retroactive benefits; therefore, the benefits a veteran receives do not increase if (s)he waits to file a claim under CRSC.

Further, veterans do not simply “elect” to receive benefits, as the government suggests. Opp. 5. They must affirmatively apply for CRSC and bear the burden of proof in showing their disability status. 10 U.S.C. § 1413a(d). Compounded with these administrative responsibilities, a veteran may face emotional and physical obstacles that make it difficult for them to apply for benefits as soon as they are eligible. Amicus Brief 13–17 (Combat-related trauma and challenges common to returning home may cause a veteran to delay submitting benefit applications). Given that CRSC is awarded to veterans who have disabilities due to combat, it is alarming that the government disregards the impact of those very disabilities on a veteran’s ability to file a CRSC application quickly. In enacting the CRSC statute, Congress resolved that such veterans warrant special treatment in the form of compensation that is unavailable to other service members—yet the government’s argument collapses the distinction Congress wrote into law.

III. THE GOVERNMENT MISSTATES THE IMPACT OF THE FEDERAL CIRCUIT’S DECISION.

While the government’s opposition echoes the Federal Circuit’s rationale, the government does not contest that “settle” or a specific limitations period in a statute is required in order for the Barring Act to be displaced. See 5 U.S.C. § 7513(d); see e.g., *Lee v. Dep’t of Justice*, 99 M.S.P.R. 256 (2005). This newly “required” language creates uncertainty in

the U.S. Merit Systems Protection Board's ("MSPB") jurisdictional review.

In *Lee*, the MSPB held that the Back Pay Act was "another law" which displaced the Barring Act because the Board had statutory authority to award compensation for lost wages and benefits under. 99 M.S.P.R. at 265. (citing *Robinson v. Dep't of the Army*, 21 M.S.P.R. 270, 272–73 (1984) (noting that a prior decision finding that the Board lacked the authority to order back pay pursuant to § 3702 was overruled because the Act empowered the Board to adjudicate any matter within its specified jurisdiction)). Like the CRSC statute, the Back Pay Act does not contain the word "settle." See 5 U.S.C. § 5596. Nonetheless, the MSPB concluded it had settlement authority because it was "specifically authorized by statute ... to order compensation." 99 M.S.P.R. at 265. The same is true of the CRSC statute, which specifically authorizes each Secretary of a military branch to pay CRSC. 10 U.S.C. § 1413a(a). The Federal Circuit's novel requirement that the word "settle" appear if the Barring Act is to be displaced would upend *Lee*, contrary to the government's argument.

Similarly, the government's assertion that the language in § 1413a is not "comparable" to § 7513(d) is simply a red herring. Opp. 13–15; See 5 U.S.C. § 7513(d) (citing § 7701). Even if § 7513(d) had comparable procedural language, the statute would still not include the language deemed required by the Federal Circuit's test and would not displace the Barring Act—contrary to OPM's decision.

The government also misstates the impact of the Federal Circuit's decision on 10 U.S.C. § 7712. See Opp. 15. The legislative history of § 7712 shows

Congress used the word “settlement” in a prior version of the statute to vest authority in the GAO to address claims of persons who pass away in locations under Army jurisdiction. That version was removed and Congress transferred the authority from GAO to the Department of Defense (“DOD”). The current version of § 7712 does not use the word “settle” nor anything similar and does not contain a specific limitations period. By the requirements set forth in the Federal Circuit’s test, the absence of the word “settle” and a specific limitations period would remove settlement authority from § 7712, leaving claims under it subject to the Barring Act. Such claims would be settled by the Office of Management and Budget, see 31 U.S.C. § 3702(a)(4), contrary to Congress’s plain intent for the DOD to have authority to settle claims.

The impact of the Federal Circuit’s decision will indeed upend the administrative resolution of such claims. This Court should correct that decision here.

IV. THE FEDERAL CIRCUIT’S DECISION IS INCONSISTENT WITH SUPREME COURT PRECEDENT.

This Court held that “settling a claim” means to administratively determine the validity of the demand for money against the government and the amount of money due. 240 U.S. at 221. In *Illinois Surety*, a “final settlement” of the contract occurred when the Supervising Architect received the certificate from the chief of the technical division of the office that all work performed under the contract had been satisfactorily completed and an amount due had been determined and approved by the Secretary of the Treasury. *Id.* at 222. Despite the government’s contention, Opp. 12, the Court’s

rationale did not rest upon the mere presence of the word “settle,” instead, it determined that a “final settlement” depended on when the basis of the settlement was approved and payment was ordered.

The CRSC statute follows this guidance. As Judge Reyna noted, the statute identifies who is eligible to file a claim for combat-related disability benefits, grants the “Secretary concerned” authority to pay and determine the “monthly amount to be paid” to eligible veterans, 10 U.S.C. § 1413a(a), (b)(1), and identifies the “source of payments” (the DOD Military Retirement Fund). *Id.* § 1413a(h). Because the CRSC statute grants authority to determine eligibility and amount of money owed and to make payment thereon, it is clear that the CRSC provides a settlement mechanism consistent with this Court’s precedent. The lack of alignment with the Federal Circuit’s decision demonstrates why this case is ripe for review.

The Federal Circuit decision also goes against the precedent it established in *Hernandez*. The government points to *Hernandez* as a case where the statute, USERRA, does not fall under the Barring Act’s jurisdiction. Opp. 14. The case at hand is parallel to *Hernandez* and should be treated as such. There, the Federal Circuit recognized that “the period for recovery under USERRA is governed exclusively by 38 U.S.C. § 4324(c), and is not limited by the Back Pay Act, 5 U.S.C. § 5596, or the Barring Act, 31 U.S.C. § 3702.” *Hernandez v. Dep’t of Air Force*, 498 F.3d 1328, 1331–32 (Fed. Cir. 2007). This is because “where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment’.” *Id.* at 1331 (citing *Morton v. Mancari*, 417 U.S. 535, 550–51, (1974)). The CRSC

is a specific statute that details who is entitled to its benefits, how the benefits are calculated, the source of the benefits, and who is responsible for paying the benefits. 10 U.S.C. § 1413a. These detailed statutory provisions liken the CRSC to the USERRA—neither statute should fall under the Barring Act’s purview and a determination otherwise conflicts with this Court’s precedent.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

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